

Appendix D – CHIP Loan Documents

General Explanation of CHIP Loan Documents

The attached loan documents are to document downpayment assistance loans and rehabilitation loans under the CHIP Program.

Downpayment Assistance Loans:

The borrower will execute 3 documents in connection with this loan: a Loan Agreement, a promissory note, and a security deed. There is only one Loan Agreement form and one security deed form, but there are 3 note forms, 2 of which are used where the loan will be forgiven over time and the other of which is used where the loan is to be repaid. Only the security deed is recorded after it is signed.

As indicated above, there are 2 notes for the downpayment assistance loans where the principal will be forgiven over time. One is for a 5-year affordability period, and the other is for a 10-year affordability period. The notes are essentially identical, except for section 2(a). There are no regular payments due under the notes. Rather, they are forgiven ratably during the affordability period. Because the principal of the loan is partially forgiven for each year of the affordability period, a different schedule for the declining balance of the loan is set forth in section 2(a) of each note. Under both notes, the borrower's primary obligation is to use the property as the family's primary residence for the entire affordability period. If the borrower does not fulfill that requirement, repayment is triggered under the note. The borrower can breach that requirement by selling or transferring the property or by leasing it. Those events are referred to as "payment events" in the notes, because they trigger payment. The death of the borrower does not necessarily trigger payment under the note. If the borrower's family continues to use the property as its primary residence after the borrower's death, no payment is required.

The third note form is for a downpayment assistance loan where the borrower will repay the principal.

Once payment is triggered, the "net proceeds" method is used to collect the amount owed under the note. Under that method, the amount owed under the note and the "borrower's investment" (which is any downpayment or capital improvements that the borrower made with his own money) are added together. If the "net proceeds" from the transfer (*i.e.*, the gross proceeds less any payment on a senior loan and less any closing costs the borrower pays) are more than the total of the amount owed under the note plus the "borrower's investment," then the lender is paid in full. If there are no "net proceeds," the lender gets nothing. If there are "net proceeds," but they are less than the total of the amount owed under the note plus the "borrower's investment," the lender and borrower share the net proceeds, per the formula set forth in section 2(b) of the note.

Rehabilitation Loans:

The borrower will execute 3 documents in connection with this loan: a Loan Agreement, a promissory note, and a security deed. There is only one Loan Agreement

form and one security deed form, but there are 3 note forms. Only the security deed is recorded after it is signed. If there is going to be a grant of the project delivery costs, the borrower will also execute a Grant Agreement, and a form Grant Agreement is attached for that purpose.

As indicated, there are 3 notes for rehab loans. One of the notes requires the borrower to repay the entire loan amount if a "payment event" occurs before the end of the affordability period. The other 2 notes require the borrower to repay part of the loan amount, depending on when the "payment event" occurs during the affordability period. In other words, the notes partially forgive the amount owed each year during the affordability period. One of the notes is for a 5-year affordability period and the other is for a 10-year affordability period. The events triggering payment are the same kind of events mentioned above, *i.e.*, the borrower quits using the property as the family's primary residence.

Security Deeds:

There is only one security deed form. It can be used either for a downpayment assistance loan or a rehabilitation loan. As indicated above, it is recorded after it is signed.

Loan Agreement:

There are 2 Loan Agreement forms, one for downpayment assistance loans and one for rehabilitation loans. Although the 2 forms are similar, they are not interchangeable, and only the form that matches the type of loan being made should be used.

INSTRUCTIONS

The attached Deed to Secure Debt is for any CHIP Loan. The numbers below correspond with numbers in each of the blank spaces in the form Deed and indicate what information needs to be inserted in the blank space.

- [1] The name of the borrower goes in this space.
- [2] The borrower's address goes in this space.
- [3] The name of the city or county goes in this space.
- [4] The address of the city or county goes in this space.
- [5] The amount of the loan goes in this space.
- [6] The date that corresponds with the end of the affordability period goes in this space.
- [7] The name of the first or senior lender goes in this space.
- [8] The number of years in the affordability period goes in this space.

After recording,
return to:

**SUBORDINATE DEED TO SECURE DEBT,
RESTRICTIVE COVENANT,
AND SECURITY AGREEMENT**
[CHIP Program—Second Priority]

1. **Grantor:** [1]_____,
 whose address is [2]_____
 _____.
2. **Lender:** [3]_____, whose address is [4]_____
 _____.
3. **The Loan:** A loan in the principal amount of [5]\$_____.
4. **Loan Documents:** A promissory note evidencing the Loan (the "Note"), this
 Deed, and any other document or instrument executed by
 Grantor or any other person in any way pertaining to the
 Loan.
5. **Maturity Date:** No later than [6]_____, 20____.
6. **Senior Lender:** The "Senior Lender" is [7]_____,
 which has a first priority security deed on the Property and a first priority security interest
 in the Collateral. Borrower and Lender hereby agree and acknowledge that this Deed and

the Note are subordinate to the loan documents, right, title, and interests of Senior Lender.

7. **The Property:** The "Property" is the real property described in **Exhibit A**, together with all improvements, fixtures, equipment, easements, rights-of-way, water rights, other rights, privileges, franchises, tenements, hereditaments, and appurtenances belonging or in any way appertaining to it, including any interest in adjoining road beds (all improvements located on the Property now or in the future shall be referred to as the "Improvements").

8. **Obligations:** This Deed secures the following obligations (collectively, the "Obligations"): (a) the Loan and the Note; (b) all other debts, covenants, agreements, and obligations of Grantor to Lender under the Loan Documents; (c) all future amounts Lender advances to Grantor, on Grantor's behalf, or to protect Lender's interest in the Property or Collateral; (d) all other debts of any kind, owing now or in the future from Grantor to Lender.

9. **Grant:** For good and valuable consideration, Grantor grants and conveys to Lender the Property in **FEE SIMPLE**. This Deed is a security deed passing legal title under Georgia law and is not a mortgage. This Deed is made to secure the timely payment and performance of the Obligations. The lien of any future advances by Lender shall relate back to the date of this Deed.

10. **Warranties:** Grantor warrants the following: (a) Subject only to Senior Lender's interests, Grantor has fee simple title to the Property and has legal title to the Collateral. This warranty of title shall survive Lender's foreclosure of Grantor's interest in the Property and shall be enforceable by any person who may acquire title to the Property by foreclosure or sale under power. (b) Grantor warrants and will defend Lender's title to the Property against the claims of all persons. (c) Except for Senior Lender, Grantor has not granted any other person any interest in the Property or the Collateral.

11. **Restrictive Covenant:** During the entire "Affordability Period" (as defined below), Borrower's family shall continuously use and occupy the Property as its principal residence. Borrower shall not lease or voluntarily or by operation of law sell all or any part of the Property or any interest in the Property during the Affordability Period. Any abandonment of the Property or other breach of this Covenant shall be an "Event of Default." As used in this section, "family" has the same meaning as in the HOME regulations (currently found at 24 CFR §92.1 et seq.) and the "Affordability Period" is the period starting on the date of this Deed and continuing for **[8]**____ years. If this covenant is breached before the expiration of the Affordability Period, the Loan amount (or a portion of it) shall be subject to recapture by Lender, as more particularly set forth in the Note.

12. **Other Covenants of Grantor:**

(a) **Insurance.** Until all Obligations are paid in full, Grantor shall obtain and maintain in force fire and casualty insurance insuring the Improvements with Lender

named as a loss payee under a mortgagee clause acceptable to Lender. Grantor shall pay all premiums on such insurance on a timely basis. If Grantor fails to pay any insurance premium by its due date, Lender may pay the premium. If Grantor fails to maintain the insurance required by this section, Lender may obtain a replacement policy of insurance. If Lender expends funds under this section, Grantor shall on demand reimburse Lender for the amount expended plus interest at the "Default Rate" (as defined in the Note). Promptly upon request, Grantor shall provide Lender with evidence that it is in compliance with this section. The form, amount, coverages, and insurer for the required insurance under this section are subject to Lender's approval, and Lender may change the requirements, as it deems prudent in its sole discretion. If there is a loss, subject to the rights of Senior Lender, the proceeds of insurance shall be paid to Lender, and Lender may apply the proceeds to the restoration of the Improvements or to the Loan, as Lender determines in its sole discretion.

(b) Taxes. Grantor shall pay when due all taxes, assessments, and other charges against the Property or Collateral (each of which is referred to as a "Tax"). If, however, Grantor is not in default under any Loan Document, Grantor may contest the Tax, but Grantor must do so diligently, in good faith, and without prejudice to Lender. If required by Lender, Grantor shall provide satisfactory security to protect Lender's interest. If Grantor intends to contest any Tax, Grantor shall give Lender advance notice and, upon request, shall provide Lender with copies of all documents relating to the proceeding. If Grantor fails to pay any Tax when due, Lender may pay the Tax. If Lender does so, Grantor shall on demand reimburse Lender for the amount paid plus interest at the Default Rate.

(c) Security Interest. Grantor grants Lender a security interest in any fixtures or equipment affixed to the Property (collectively, the "Collateral"). Grantor shall execute and deliver to Lender or hereby authorizes Lender to file without Grantor's signature all financing statements, continuation statements, or other instruments requested or deemed necessary or desirable by Lender in order to perfect or maintain the perfection of Lender's security interest in the Collateral. Grantor shall replace any Collateral from the Property with comparable property. If an Event of Default occurs, Lender shall have all of the rights and remedies of a secured party under the Georgia Uniform Commercial Code. Any sale pursuant to this section shall be deemed a public sale conducted in a commercially reasonable manner if held contemporaneously with a sale under the power of sale granted in this Deed. Lender need not take possession of the Collateral before a sale, and it shall not be necessary that the Collateral be present at the location of such a sale. Grantor shall be liable for all expenses incurred by Lender in exercising its rights in the Collateral.

(d) Inspection Right. Lender or its agents may inspect the Property upon giving Grantor reasonable advance notice.

(e) Miscellaneous Covenants. Without Lender's prior written consent, Grantor shall not grant or create any easement or right-of-way in the Property or consent to any other restrictive covenants. Grantor shall maintain the Property in good condition and repair and shall not cause or permit any waste of the Property or any nuisance on the

Property. Grantor shall comply with all applicable laws relating to the ownership, use, or operation of the Property, including any environmental laws or regulations. Grantor shall keep the Property free from all mechanics' or materialmen's liens, judgments, and other liens and shall remove or bond over any such lien within 20 days of the time a notice of lien is filed or it attaches to the Property, whichever is sooner. Grantor shall appear in and defend any action or proceeding purporting to affect the Property or Lender's interest in the Property and notify Lender of the proceeding.

13. **Special Waivers:** GRANTOR EXPRESSLY: (A) ACKNOWLEDGES LENDER'S RIGHT TO ACCELERATE THE DEBT AND THE POWER OF ATTORNEY GIVEN IN THIS DEED TO LENDER TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN THE NOTICE (IF ANY) SPECIFICALLY REQUIRED UNDER THE PROVISIONS OF THIS DEED; (B) WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, THE VARIOUS PROVISIONS OF THE CONSTITUTION FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING BEFORE LENDER'S EXERCISE OF ANY RIGHT OR REMEDY, EXCEPT ANY NOTICE SPECIFICALLY REQUIRED BY THIS DEED; (C) ACKNOWLEDGES HAVING READ THIS DEED AND HAVING THE OPPORTUNITY TO ASK ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS DEED AND ITS PROVISIONS; (D) ACKNOWLEDGES HAVING CONSULTED OR HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL OF GRANTOR'S CHOICE BEFORE EXECUTING THIS DEED; (E) ACKNOWLEDGES THAT ALL WAIVERS OF RIGHTS HAVE BEEN MADE KNOWINGLY, INTENTIONALLY, AND WILLINGLY; AND (F) AGREES THAT GRANTOR'S RIGHT TO NOTICE SHALL BE LIMITED TO THOSE RIGHTS TO NOTICE PROVIDED BY THIS DEED OR THE OTHER LOAN DOCUMENTS OR AS REQUIRED UNDER LAW (IF ANY) AND NO OTHER.

14. **Events of Default:** Each of the following constitutes an Event of Default under this Deed: (a) Grantor's failure to perform or observe any covenant in this Deed, the Note or any other Loan Document; or (b) any warranty or representation by Grantor in this Deed is false in any material respect when made.

15. **Remedies:** If an Event of Default occurs and is not cured within 10 days in the case of a monetary default and 30 days in the case of a non-monetary default, Lender may declare a default under this Deed and, if Lender does so, in addition to any other rights or remedies Lender may have, Lender may exercise one or more of the following remedies:

(a) **Possession.** Lender may enter upon and take possession of the Property (without the appointment of a receiver or application for one) and do all acts which may be desirable in Lender's judgment to preserve the Property's value, its marketability, or

the ability to rent the Property or increase the income from it. If Lender takes possession, it may employ an agent or agents to manage, operate, and lease the Property, either in its own name or in the name of Grantor, and may collect the rents and income and apply them to the Obligations (including expenses of operation and collection) in whatever order it chooses in its sole and absolute discretion.

(b) Specific Performance. Lender may specifically enforce the provisions of this Deed or any instrument evidencing any part of the Obligations.

(c) Protective Advances. In its sole and absolute discretion, Lender may pay any amount deemed appropriate by Lender to protect its interest in the Property and Collateral or cure any Event of Default. The amount of any such payment, with interest from the date of payment at the Default Rate, shall become a part of the Obligations and be due and payable by Grantor to Lender upon demand.

(d) Acceleration. Without further notice to or demand upon Grantor, Lender may accelerate the maturity and payment of the entire Obligations, all of which will then become immediately due and payable.

(e) Power of Sale. (1) Lender may sell the Property at public auction at the usual place for conducting sales at the courthouse in the county where the Property or any part of it is located to the highest bidder for cash, first advertising the time, terms, and place of such sale by publishing a notice of the sale once a week for four consecutive weeks (without regard to the actual number of days) in a newspaper in which sheriff's advertisements are published in the county, and Grantor waives all other notice. Lender may execute and deliver to the purchaser at the sale a sufficient conveyance of the Property in fee simple, which conveyance may contain recitals about the default upon which the execution of the power of sale depends, and the recitals shall be presumptive evidence of due compliance with all acts prerequisite to the sale. Lender and its agents and representatives may bid and purchase at any such sale. At any sale under the power granted in this Deed or a sale pursuant to any judicial order or otherwise, the Property or any part of it may be sold in one parcel and as an entirety or in such parcels, manner, or order as Lender in its sole discretion may elect.

(2) Grantor hereby constitutes and appoints Lender as its agent and attorney-in-fact to make such recitals, sale, and conveyance, and Grantor hereby ratifies and confirms all acts of its attorney-in-fact. Further, Grantor agrees that such recitals shall be binding and conclusive upon Grantor and agrees that the conveyance by Lender under this power of sale (or by deed in lieu of foreclosure, then as to such conveyance) shall bar all right, title, interest, equity of redemption (including all statutory redemption, homestead, dower, and curtesy), and all other exemptions of Grantor in and to the Property.

(3) In case of such a sale, Grantor or any person in possession of all or any part of the Property under Grantor shall become tenants holding over and shall immediately deliver possession to the purchaser at such sale or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over.

(4) The power and agency granted to Lender are coupled with an interest and are irrevocable by death, dissolution, or otherwise and are in addition to any other remedies which Lender may have under this Deed or the other Loan Documents, at law, or in equity.

(5) At its option, Lender is authorized to foreclose Grantor's interest in the Property, subject to any superior rights of any tenants of the Property. The failure to make any such tenant a defendant in any such foreclosure action and to foreclose their interests and rights will not be a defense to any action Lender institutes to collect the Obligations or to collect any deficiency. One or more exercises of the powers granted in this Section shall not extinguish or exhaust the power unless the entire Property is sold or the Obligations are paid in full.

(6) The proceeds of any sale or foreclosure under this Deed shall be applied in the following manner: **First**, to payment of all costs of the sale, including legal fees and disbursements, title charges, advertising, commissions, and transfer taxes and payment of any advances by Lender for expenses and liabilities for which Grantor is responsible under this Deed or any of the other Loan Documents; **Second**, to payment of any other previously unreimbursed amounts expended by Lender under this Deed or any other Loan Document, together with interest at the default rate of interest in the Note; and, **Third**, to payment of the Obligations, including interest at the default rate in the Note. Lender shall have the right to apply the proceeds of the sale to the Obligations in whatever order it chooses in its sole and absolute discretion. After application of the sale proceeds as provided above, if there is any surplus, Lender shall pay that surplus to Grantor. If there is a deficiency, Grantor shall immediately pay Lender the amount of the deficiency.

(f) Receiver. In any action to foreclose this Deed or if an Event of Default occurs, Lender may apply for the appointment of a receiver for the rents and income from the Property or the Property or both. If Lender does so, Grantor agrees that Lender is entitled to the appointment of such a receiver as a matter of right, without regard to the value of the Property as security for the amounts due Lender or the solvency of any person or entity liable for payment of such amounts. Grantor hereby consents to the appointment of such receiver or receivers, waives any and all notices of and defenses to such appointment, and agrees not to oppose any such application by Lender. The appointment of such receiver, trustee, or other appointee by virtue of any court order, statute, or regulation shall not impair or in any manner prejudice Lender's rights to receive payment of the rents and income from the Property pursuant to other terms and provisions of this Deed or any of the other Loan Documents. Any money advanced by Lender in connection with any such receivership shall be deemed part of the Obligations and shall bear interest at the Default Rate (as defined in the Note). The receiver or his agents shall be entitled to enter upon and take possession of any and all of the Property and Collateral to the same extent and in the same manner as Grantor. The receiver or his agents may exclude Grantor and its agents and employees from the Property and may have, hold, use, operate, manage, repair, maintain, insure, and control the Property. At the option of Lender, such receivership shall continue until full payment of all Obligations or until title to the Property is transferred by foreclosure or sale under this Deed.

(g) Remedies Cumulative. The rights and remedies of Lender under this Deed are separate, distinct, and cumulative of other powers and rights that Lender has in law or equity or under the other Loan Documents. No right or remedy of Lender is exclusive; all of them are cumulative to the remedies for collection of debt, enforcement of rights under security deeds, and preservation of security as provided at law, in equity, or under the other Loan Documents. No act of Lender shall be construed as an election of an exclusive remedy, unless Lender indicates so in writing.

16. Miscellaneous:

(a) Notices. All notices required under this Deed shall be in writing and shall be deemed given and received 3 days from the date of deposit in the U.S. mail, certified mail, return receipt requested, postage-prepaid; or when hand delivered by the party, an overnight service (such as FedEx), or a courier service. The addresses set forth in sections 1 and 2 shall be used. Grantor or Lender may change the address to which notices are to be sent by giving the other party 10 business days written notice of the change.

(b) No Waiver of Future Compliance. Any indulgence or departure permitted at any time by Lender from any of the provisions of this Deed or with respect to the Obligations shall not modify the same or waive the requirement of future compliance by Grantor. Lender's failure to exercise any right or remedy upon an Event of Default shall not waive Lender's rights or remedies for any subsequent Event of Default.

(c) Nomenclature. If there is more than one person signing this Deed, then "Grantor" means and shall include all such persons. The words "Grantor" and "Lender" shall include their respective successors and permitted assigns and all those holding under either of them. Any reference to the "Note" or to any "Loan Document" shall include any amendments, substitutions, renewals, extensions, or replacements to or for it. The word "including" means "including (but not limited to)," unless otherwise specifically stated.

(d) Payment of Expenses. Grantor shall pay all of Lender's expenses actually incurred in any efforts to enforce any provision of this Deed, including reasonable attorney's fees and other legal expenses.

(e) Severability. A determination that any provision of this Deed is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Deed to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstance.

(f) Section Headings. The headings of the sections and paragraphs of this Deed are for convenience only and shall not affect any of the terms of this Deed.

(g) Governing Law. This Deed will be governed by and construed in accordance with Georgia law.

(h) Amendments. This Deed may be amended or modified only by an instrument in writing signed by Lender and Grantor.

(i) Subrogation. Lender shall be subrogated to any encumbrance, lien, claim, or demand, and to all the rights and security for its payment, paid or discharged by Lender under this Deed, and any such subrogation rights shall be additional and cumulative security for Lender.

(j) Time of the Essence. **Time is of the essence of this Deed.**

(k) Revival of Deed. Subject to the remainder of this section, if there is an assignment of an FHA mortgage to HUD or if a person forecloses Grantor's interest in the Property or takes a deed in lieu of foreclosure and such person's mortgage or security deed was prior to this Deed, this Deed and the restrictions and covenants in it (including the affordability restrictions in section 11) shall terminate and no longer affect the Property. Notwithstanding such a foreclosure or deed in lieu of foreclosure, however, this Deed and the covenants and restrictions in it shall be revived and shall remain in force for the remainder of the Affordability Period when and if the owner of record before such foreclosure acquires or obtains any ownership interest in the Property at any time during the Affordability Period.

IN WITNESS WHEREOF, Grantor has duly executed and sealed this Deed on

_____.

Signed, sealed, and delivered
in the presence of:

Unofficial Witness

Notary Public

[Notarial Seal]

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INSTRUCTIONS

(Rehab Loans; Declining balances)

The attached notes are for rehabilitation loans where the amount that the borrower has to repay declines ratably during the affordability period. The numbers below correspond with numbers in each of the blank spaces appearing in the notes and indicate what information needs to be inserted in each blank space.

- [1] The name of the City or County.
- [2] The address of the City or County.
- [3] The amount of the loan.
- [4] The printed name of the first borrower (the borrower signs on the line above)
- [5] The printed name of the second borrower (the borrower signs on the line above)

PROMISSORY NOTE [CHIP Program]

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the order of the [1] _____, Georgia, ("Holder"), at [2] _____, Georgia, or such other place as Holder may direct, [3]\$ _____ (the "Loan").

1. Definitions. In addition to terms defined elsewhere in this Note, the following terms shall have the following meanings: "Affordability Period" means the period starting with the date of this Note and continuing for 5 years; "Anniversary" means one year from the date of this Note (which would be the first Anniversary) and the same day of each subsequent year through the end of the Affordability Period; "Borrower" means and includes all persons signing this Note; "Deed" means the Subordinate Deed to Secure Debt and Security Agreement from Borrower to Holder, transferring the Property and securing the Loan; "Default Rate" means an interest rate of 10% per year, compounded annually; "family" has the same meaning as under the HOME regulations (currently found at 24 CFR §92.1 et seq.); "including" means "including, but not limited to;" "Loan Amount" means the original amount of the Loan plus any amounts Borrower owes under the Deed; "Loan Document" means this Note, the Deed, and any other agreement or document relating in any way to the Loan; "Payment Event" is an event described in section 5; "Property" means the real property conveyed by the Deed, as more particularly described in the Deed; "Senior Loan" means a loan of Borrower that has an interest in the Property superior to Holder's interest; "Transfer" means any lease or a voluntary or involuntary sale of all or any part of the Property or any interest in the Property.

2. Payment.

(a) Time and Amount of Payment. There will be no required regular monthly or annual payments under this Note. If there is no Payment Event before the end of the Affordability Period, Borrower shall not be obligated to pay Holder any part of the Loan Amount. If, however, there is a Payment Event before the end of the Affordability Period, at the time of the Payment Event, Borrower shall pay Holder the amount specified below (the "Amount Due"):

<u>Date of Payment Event</u>	<u>Part of Loan Amount to be Paid</u>
Before first Anniversary	100%
From first Anniversary and before second Anniversary	80%
From second Anniversary and before third Anniversary	60%
From third Anniversary and before fourth Anniversary	40%
From fourth Anniversary and before fifth Anniversary	20%

For example, if a Payment Event occurs between the second and third Anniversary and the Loan Amount is \$10,000.00, Borrower's Amount Due to Holder would be \$6,000.00.

(b) Application of Payments. Lender will apply any payment first to any charges or other amounts owed under this Note or any other Loan Document, second to any accrued and unpaid interest under this Note, and finally to principal.

(c) Exceptions. If any representation made by Borrower in connection with the Loan was false in any material respect when made, notwithstanding subsection (a), Borrower shall owe Holder the full Loan Amount, including interest at the Default Rate from the date the misrepresentation is discovered until payment in full.

3. Prepayment. Borrower may prepay this Note in full or in part at any time and from time to time without notice, penalty, or prepayment fee, and, if prepaid in full, the Amount Due at the time of the prepayment shall be calculated under section 2(a), using the date of prepayment as if it were the date of a Payment Event.

4. Costs and Fees. If this Note is collected by law or through an attorney at law, in addition to any other amounts owed under this Note, Borrower shall be liable for all costs of collection incurred by Holder, including attorney's fees equal to 15% of the Loan Amount, whether or not suit is brought and whether incurred in connection with collection, trial, appeal, or otherwise.

5. Payment Events. The following events are "Payment Events" under this Note: (a) a Transfer before the end of the Affordability Period; (b) at any time during the Affordability Period, Borrower's family does not occupy the Property as its principal residence; or (c) Lender declares a default under the Deed.

6. Miscellaneous. **Time is of the essence of this Note.** This Note shall be construed and enforced in accordance with Georgia law. As used in this Note, the words "Borrower" and "Holder" shall include their respective heirs, representative, successors and assigns. If there is more than one person signing this Note, each person signing shall be jointly and severally liable with all other persons signing. By signing this Note, Borrower: (a) waives demand, presentment of payment, notice of dishonor and nonpayment, protest, notice of protest, and all other notices and diligence in collecting this Note; (b) agrees to any substitution, addition, subordination, or release of any collateral (including the Property) or of any person primarily or secondarily liable on this Note; (c) agrees that Holder shall not be required first to sue or exhaust its remedies against Borrower or any other liable person or against any collateral (including the Property) in order to enforce payment of this Note; (d) agrees that Holder may exercise or refrain from exercising any right or remedy that it may have; and (e) agrees that, notwithstanding the occurrence of any of the foregoing, Borrower is liable for all sums due under this Note, unless Holder releases Borrower in writing. No waiver or release by Holder shall be effective unless in writing. A waiver or release with reference to one event shall not be construed as continuing or as a bar to or waiver or release of any subsequent right, remedy, or recourse as to any subsequent event. Borrower waives all homestead and exemption rights it may have under federal or state law, both as to himself and in all of his real and personal property, against the enforcement and collection of the obligations evidenced by this Note. To the extent Borrower has the power to do so, Borrower assigns to Holder a sufficient amount of such homestead or other exempt property as may be set apart in bankruptcy to pay this Note in full with all costs of collection and directs

any trustee in bankruptcy having possession of such homestead or exempt property to deliver to Holder a sufficient amount to pay the debt evidenced by this Note. To the extent possible, Borrower appoints Holder as his attorney-in-fact to claim any and all exemptions allowed by law.

IN WITNESS WHEREOF, Borrower has executed this Note.

Date: _____

Name:[4] _____
[please print]

Date: _____

Name:[5] _____
[please print]

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PROMISSORY NOTE [CHIP Program]

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the order of the [1]_____, Georgia, ("Holder"), at [2]_____, Georgia, or such other place as Holder may direct, [3]\$_____ (the "Loan").

1. Definitions. In addition to terms defined elsewhere in this Note, the following terms shall have the following meanings: "Affordability Period" means the period starting with the date of this Note and continuing for 10 years; "Anniversary" means one year from the date of this Note (which would be the first Anniversary) and the same day of each subsequent year through the end of the Affordability Period; "Borrower" means and includes all persons signing this Note; "Deed" means the Subordinate Deed to Secure Debt and Security Agreement from Borrower to Holder, transferring the Property and securing the Loan; "Default Rate" means an interest rate of 10% per year, compounded annually; "family" has the same meaning as under the HOME regulations (currently found at 24 CFR §92.1 et seq.); "including" means "including, but not limited to;" "Loan Amount" means the original amount of the Loan plus any amounts Borrower owes under the Deed; "Loan Document" means this Note, the Deed, and any other agreement or document relating in any way to the Loan; "Payment Event" is an event described in section 5; "Property" means the real property conveyed by the Deed, as more particularly described in the Deed; "Senior Loan" means a loan of Borrower that has an interest in the Property superior to Holder's interest; "Transfer" means any lease or voluntary or involuntary sale of all or any part of the Property or any interest in the Property.

2. Payment.

(a) Time and Amount of Payment. There will be no required regular monthly or annual payments under this Note. If there is no Payment Event before the end of the Affordability Period, Borrower shall not be obligated to pay Holder any part of the Loan amount. If, however, there is a Payment Event before the end of the Affordability Period, at the time of the Payment Event, Borrower shall pay Holder the amount specified below (the "Amount Due"):

<u>Date of Payment Event</u>	<u>Part of Loan Amount to be Paid</u>
Before first Anniversary	100%
From first Anniversary and before second Anniversary	90%
From second Anniversary and before third Anniversary	80%
From third Anniversary and before fourth Anniversary	70%
From fourth Anniversary and before fifth Anniversary	60%
From fifth Anniversary and before sixth Anniversary	50%
From sixth Anniversary and before seventh Anniversary	40%

From seventh Anniversary and before eighth Anniversary	30%
From eighth Anniversary and before ninth Anniversary	20%
From ninth Anniversary and before tenth Anniversary	10%

(For example, if a Payment Event occurs between the second and third Anniversary and the Loan Amount is \$10,000.00, Borrower's Amount Due to Holder would be \$8,000.00.)

(b) Application of Payments. Lender will apply any payment first to any charges or other amounts owed under this Note or any other Loan Document, second to any accrued and unpaid interest under this Note, and finally to principal.

(c) Exceptions. If any representation made by Borrower in connection with the Loan was false in any material respect when made, notwithstanding subsection (a), Borrower shall owe Holder the full Loan Amount, including interest at the Default Rate from the date the misrepresentation is discovered until payment in full.

3. Prepayment. Borrower may prepay this Note in full or in part at any time and from time to time without notice, penalty, or prepayment fee, and, if prepaid in full, the Amount Due at the time of the prepayment shall be calculated under section 2(a), using the date of prepayment as if it were the date of a Payment Event.

4. Costs and Fees. If this Note is collected by law or through an attorney at law, in addition to any other amounts owed under this Note, Borrower shall be liable for all costs of collection incurred by Holder, including attorney's fees equal to 15% of the Loan Amount, whether or not suit is brought and whether incurred in connection with collection, trial, appeal, or otherwise.

5. Payment Events. The following events are "Payment Events" under this Note: (a) a Transfer before the end of the Affordability Period; (b) at any time during the Affordability Period, Borrower's family does not occupy the Property as its principal residence; or (c) Lender declares a default under the Deed.

6. Miscellaneous. **Time is of the essence of this Note.** This Note shall be construed and enforced in accordance with Georgia law. As used in this Note, the words "Borrower" and "Holder" shall include their respective heirs, representative, successors and assigns. If there is more than one person signing this Note, each person signing shall be jointly and severally liable with all other persons signing. By signing this Note, Borrower: (a) waives demand, presentment of payment, notice of dishonor and nonpayment, protest, notice of protest, and all other notices and diligence in collecting this Note; (b) agrees to any substitution, addition, subordination, or release of any collateral (including the Property) or of any person primarily or secondarily liable on this Note; (c) agrees that Holder shall not be required first to sue or exhaust its remedies against Borrower or any other liable person or against any collateral (including the Property) in order to enforce payment of this Note; (d) agrees that Holder may exercise or refrain from exercising any right or remedy that it may have; and (e) agrees that, notwithstanding the occurrence of any of the foregoing, Borrower is liable for all sums due under this Note, unless Holder releases Borrower in writing. No waiver or release by Holder shall be effective unless in

writing. A waiver or release with reference to one event shall not be construed as continuing or as a bar to or waiver or release of any subsequent right, remedy, or recourse as to any subsequent event. Borrower waives all homestead and exemption rights it may have under federal or state law, both as to himself and in all of his real and personal property, against the enforcement and collection of the obligations evidenced by this Note. To the extent Borrower has the power to do so, Borrower assigns to Holder a sufficient amount of such homestead or other exempt property as may be set apart in bankruptcy to pay this Note in full with all costs of collection and directs any trustee in bankruptcy having possession of such homestead or exempt property to deliver to Holder a sufficient amount to pay the debt evidenced by this Note. To the extent possible, Borrower appoints Holder as his attorney-in-fact to claim any and all exemptions allowed by law.

IN WITNESS WHEREOF, Borrower has executed this Note.

Date: _____

Name:[4] _____
[please print]

Date: _____

Name:[5] _____
[please print]

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INSTRUCTIONS

(Rehab Loans; Full Recapture)

The attached note is for a rehabilitation loan where the borrower is liable to repay the full amount of the loan if the borrower fails to occupy the property as his principal residence for the entire affordability period. The numbers below correspond with numbers in each of the blank spaces appearing in the notes and indicate what information needs to be inserted in each blank space.

- [1] The name of the City or County.
- [2] The address of the City or County.
- [3] The amount of the loan.
- [4] The number of years in the affordability period.
- [5] The printed name of the first borrower (the borrower signs on the line above)
- [6] The printed name of the second borrower (the borrower signs on the line above)

PROMISSORY NOTE
[CHIP Program]

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the order of the [1]_____, Georgia, ("Holder"), at [2]_____, Georgia, or such other place as Holder may direct, [3]\$_____ (the "Loan").

1. Definitions. In addition to terms defined elsewhere in this Note, the following terms shall have the following meanings: "Affordability Period" means the period starting with the date of this Note and continuing for [4]_____ years; "Anniversary" means one year from the date of this Note (which would be the first Anniversary) and the same day of each subsequent year through the end of the Affordability Period; "Borrower" means and includes all persons signing this Note; "Deed" means the Subordinate Deed to Secure Debt and Security Agreement from Borrower to Holder, transferring the Property and securing the Loan; "Default Rate" means an interest rate of 10% per year, compounded annually; "family" has the same meaning as under the HOME regulations (currently found at 24 CFR §92.1 et seq.); "including" means "including, but not limited to;"; "Loan Amount" means the amount of the Loan plus any amounts Borrower owes under the Deed; "Loan Document" means this Note, the Deed, and any other agreement or document relating in any way to the Loan; "Payment Event" is an event described in section 5; "Property" means the real property conveyed by the Deed, as more particularly described in the Deed; "Senior Loan" means a loan of Borrower that has an interest in the Property superior to Holder's interest; "Transfer" means any lease or voluntary or involuntary sale of all or any part of the Property or any interest in the Property.

2. Payment.

(a) Time and Amount of Payment. There will be no required regular monthly or annual payments under this Note. If there is no Payment Event before the end of the Affordability Period, Borrower shall not be obligated to pay Holder any part of the Loan amount. If, however, there is a Payment Event before the end of the Affordability Period, at the time of the Payment Event, Borrower shall pay Holder the entire Loan Amount.

(b) Application of Payments. Lender will apply any payment first to any charges or other amounts owed under this Note or any other Loan Document, second to any accrued and unpaid interest under this Note, and finally to principal.

3. Prepayment. Borrower may prepay this Note in full or in part at any time and from time to time without notice, penalty, or prepayment fee.

4. Costs and Fees. If this Note is collected by law or through an attorney at law, in addition to any other amounts owed under this Note, Borrower shall be liable for all costs of collection incurred by Holder, including attorney's fees equal to 15% of the Loan Amount,

whether or not suit is brought and whether incurred in connection with collection, trial, appeal, or otherwise.

5. Payment Events. The following events are "Payment Events" under this Note: (a) a Transfer before the end of the Affordability Period; (b) at any time during the Affordability Period, Borrower's family does not occupy the Property as its principal residence; (c) any misrepresentation in Borrower's application to Lender; or (d) Lender declares a default under the Deed.

6. Miscellaneous. Time is of the essence of this Note. This Note shall be construed and enforced in accordance with Georgia law. As used in this Note, the words "Borrower" and "Holder" shall include their respective heirs, representative, successors and assigns. If there is more than one person signing this Note, each person signing shall be jointly and severally liable with all other persons signing. By signing this Note, Borrower: (a) waives demand, presentment of payment, notice of dishonor and nonpayment, protest, notice of protest, and all other notices and diligence in collecting this Note; (b) agrees to any substitution, addition, subordination, or release of any collateral (including the Property) or of any person primarily or secondarily liable on this Note; (c) agrees that Holder shall not be required first to sue or exhaust its remedies against Borrower or any other liable person or against any collateral (including the Property) in order to enforce payment of this Note; (d) agrees that Holder may exercise or refrain from exercising any right or remedy that it may have; and (e) agrees that, notwithstanding the occurrence of any of the foregoing, Borrower is liable for all sums due under this Note, unless Holder releases Borrower in writing. No waiver or release by Holder shall be effective unless in writing. A waiver or release with reference to one event shall not be construed as continuing or as a bar to or waiver or release of any subsequent right, remedy, or recourse as to any subsequent event. Borrower waives all homestead and exemption rights it may have under federal or state law, both as to himself and in all of his real and personal property, against the enforcement and collection of the obligations evidenced by this Note. To the extent Borrower has the power to do so, Borrower assigns to Holder a sufficient amount of such homestead or other exempt property as may be set apart in bankruptcy to pay this Note in full with all costs of collection and directs any trustee in bankruptcy having possession of such homestead or exempt property to deliver to Holder a sufficient amount to pay the debt evidenced by this Note. To the extent possible, Borrower appoints Holder as his attorney-in-fact to claim any and all exemptions allowed by law.

[signatures on next page]

IN WITNESS WHEREOF, Borrower has executed this Note.

Date: _____

Name:[5] _____
[please print]

Date: _____

Name:[6] _____
[please print]

[7c:\dca\chip_note6.doc]

INSTRUCTIONS

The attached Loan Agreement is for a CHIP Loan for rehabilitation. The numbers below correspond with numbers in each of the blank spaces in the form Agreement and indicate what information needs to be inserted in the blank space.

- [1] The name of the borrower goes in this space.
- [2] The name of the city or county goes in this space.
- [3] The address of the property being purchased goes in this space.
- [4] The amount of the loan goes in this space.
- [5] The number of years in the affordability period goes in this space.
- [6] The nature of the rehabilitation work should be described in detail in this space.
- [7] The deadline for completion of the rehabilitation work goes in this space.
- [8] The city or county's address for notice goes in this space.
- [9] The printed name of the borrower(s) goes in this space, and the borrower signs above.
- [10] The name of the city or county goes in this space.

LOAN AGREEMENT

[CHIP—Rehabilitation]

This Loan Agreement is executed _____, 20____, between
[1] _____ (“Borrower”) and the City/County of
[2] _____ (“Lender”).

RECITALS:

A. Borrower has applied to Lender for a loan (the “Loan”) to pay for the costs of rehabilitating Borrower’s residence at [3] _____, Georgia (the “Property”). The Loan is being made under the Community HOME Investment Program (“CHIP”), which is part of the HOME Program, which is administered by the Georgia Department of Community Affairs (“DCA”).

B. This Agreement will set forth the parties’ agreements relating to the Loan.

For good and valuable consideration, including the making of the Loan, the parties agree as follows:

1. The Loan. The Loan amount shall not exceed \$[4] _____, and the Loan is a deferred payment loan. The payment terms, interest rate, and other requirements are specifically set forth in the Promissory Note from Borrower to Lender for the Loan amount (the “Note”), which is being executed contemporaneously with this Agreement and the terms of which are incorporated into this Agreement by reference. The payment of the Note shall be secured by a Deed to Secure Debt (the “Deed”) from Borrower to Lender for the Property. In its discretion, Lender may disburse the Loan proceeds in a lump sum at closing or at completion of the Work or may disburse the Loan proceeds periodically pursuant to Borrower’s draw requests. If Lender chooses the latter method, Borrower shall comply with whatever draw procedures Lender imposes in its sole discretion, including requiring Borrower or its contractor to tender lien waivers in form and content satisfactory to Lender and withholding retainage up to 10%. In its sole discretion, Lender may disburse Loan proceeds to Borrower or directly to any contractor that performed part of the Work, and, if Lender chooses the latter method, such a disbursement shall be deemed a disbursement to Borrower followed by a transfer of such disbursement to the contractor.

2. Restrictions.

(a) Use and Transfer Restrictions. During the entire “Affordability Period” (as defined below), Borrower’s family shall continuously use and occupy the Property as its principal residence. Borrower shall not lease or voluntarily or by operation of law sell all or any part of the Property or any interest in the Property during the Affordability Period. Any abandonment of the Property or other breach of this covenant shall be an “Event of Default.” As used in this section, “family” has the same meaning as in the HOME regulations (currently found at 24 CFR §92.1 *et seq.*) and the “Affordability Period” is the period starting on the date of the Deed and continuing for [5]____ years. If this covenant is breached before the expiration of the Affordability Period, the Loan amount

(or a portion of it) shall be subject to recapture by Lender, as specifically set forth in the Note.

(b) Foreclosure and Revival of Restrictions. Subject to the remainder of this section, if there is an assignment of an FHA mortgage to HUD or if a person forecloses Borrower's interest in the Property or takes a deed in lieu of foreclosure and such person's mortgage or security deed was prior to the Deed, the restrictions and covenants in this section shall terminate and no longer affect the Property. Notwithstanding such a foreclosure or deed in lieu of foreclosure, however, the covenants and restrictions in the Deed and this Agreement shall be revived and shall remain in force for the remainder of the Affordability Period when and if the owner of record before such foreclosure acquires or obtains any ownership interest in the Property at any time during the Affordability Period.

3. The Work. Borrower shall only use the proceeds of the Loan to pay for the costs of rehabilitating the Property. The rehabilitation work that Borrower shall perform on the Property (the "Work") is the following:

[6] _____

_____.

Borrower shall complete the Work by [7]_____, 20____. The Work shall be performed in a good and workmanlike manner, shall not contain any defects, and shall comply with all applicable laws and regulations, including any applicable state and local building codes or ordinances and the DCA/CHIP requirements and the HOME regulations. Borrower acknowledges that the Loan amount is sufficient to fund the costs of the Work, based upon estimates obtained by Borrower, but, if the actual costs of the Work exceed the Loan amount, Borrower shall be responsible for paying any excess from other funds of Borrower. Borrower may not permit or agree to any change in the nature or price of the Work (a "change order") without Lender's prior approval of the change order.

4. Inspections. Until the Loan is paid in full, Borrower shall permit Lender or its representatives to enter upon the Property to inspect the Work before and after its completion. Borrower shall cause all contractors used in connection with the Work to cooperate with Lender and its representatives during such inspections. This provision shall not impose upon Lender any obligation to inspect the Property or any liability for the failure to detect any defect or problem with the Work or for the failure to act with respect to any such defect or problem.

5. Federal Requirements. Borrower shall comply with all regulations governing the CHIP and HOME Programs. Borrower acknowledges and agrees that the following CHIP requirements (the "CHIP Requirements") apply to the Loan: (a) Borrower's total household income cannot exceed 80% of the area media income; (b) the value of the

Property after the Work is completed cannot exceed 95% of the median purchase price for the area in which the Property is located; (c) Borrower must have fee simple title to the Property; (d) the Property must be the primary residence of Borrower; (e) the Property cannot be owned by a religious organization; (f) the Property must comply with all environmental law, rules, and regulations; (g) Borrower must comply with the insurance requirements set forth in the Deed, including obtaining and maintaining fire and hazard insurance on the Property in an amount sufficient to cover the amount of the Loan and any other mortgage encumbering the Property. Borrower shall satisfy or comply with all CHIP Requirements and the failure to do so is an Event of Default.

6. Indemnification. Borrower shall indemnify Lender, and its officials, officers, agents, and employees against all claims, liabilities, losses, costs, or expenses caused by the performance of this Agreement or the Work.

7. Borrower's Representations and Warranties. Borrower warrants and represents as follows (and acknowledges that all of these warranties and representations are material): (a) The matters contained in the Application for the Loan were true and complete in all material respects as of the date of filing and remain true and complete now. (b) No official, officer, agent, or employee of Lender or any member of the immediate family of such person has any interest in this Agreement or any proceeds or benefits from it or the Property. (c) Borrower is not presently debarred, suspended, proposed for debarment, suspension, declared ineligible, or voluntarily excluded from participation in this transaction or the HOME Program by any federal department or agency. (d) Borrower is the owner in fee simple of the Property. (e) All representations and warranties made in this Agreement shall survive the closing of the Loan.

8. Event of Default. In addition to any other "Events of Default" set forth elsewhere in this Agreement, the following shall constitute Events of Default under this Agreement: (a) Borrower's breach of any covenant under this Agreement; (b) a default under the Note or Deed; (c) any warranty or representation in this Agreement is false or materially misleading; (d) Borrower files or has filed against Borrower any bankruptcy proceeding; or (e) Borrower shall fail to provide proof satisfactory to Lender that the Work has been completed in accordance with the requirements of this Agreement.

9. Remedies. If an Event of Default occurs, Lender may, in its sole discretion, pursue any or all of the following remedies: (a) immediately suspend or terminate this Agreement and deny Borrower any future Loan disbursements under this Agreement; (b) declare the Note immediately due and payable and institute proceedings for its collection; (c) exercise any and all rights under the Deed; and (d) take any other action in law or equity. Lender's rights and remedies under this Agreement, the Note, and the Deed are cumulative. Any election of any right or remedy will not be deemed to be an election of that right or remedy to the exclusion of any other right or remedy.

10. Miscellaneous.

(a) Lender may charge Borrower a project delivery cost in connection with the Loan.

(b) As used in this Agreement, "Borrower" shall mean all persons signing this Agreement and borrowing money from Lender. The word "including" means "including (but not limited to)" unless specifically stated to the contrary.

(c) This Agreement shall be construed, interpreted, and enforced in accordance with Georgia law.

(d) All notices required under this Agreement shall be in writing and addressed to Borrower at the Property address and to Lender at [8]_____. Notice shall be mailed by certified mail, return receipt requested, postage properly prepaid, or hand delivered. Notice shall be deemed given, received, and effective 3 days from the date of mailing or on the date of delivery. Either party may change the address for notice by giving the other party notice of the new address in compliance with this section.

(e) This Agreement, the Note, and the Deed contains the entire agreement between the parties relating to the subject matter of this Agreement.

(f) This Agreement will inure to the benefit of and be binding upon the parties and their successors, representatives, and assigns.

(g) Borrower agrees to perform any and all further acts and to execute and deliver any and all additional documents which may be reasonably necessary to carry out the terms of this Agreement or correctly set forth the terms of this Agreement.

(h) Borrower may not assign any right, benefit, or obligation of Borrower under this Agreement without Lender's prior written approval, which Lender may grant or deny in its sole and absolute discretion.

(i) Neither party is an agent or representative of the other. Borrower is solely responsible for procuring and providing all personnel, facilities, materials, and services necessary to perform Borrower's obligations under this Agreement. Nothing in this Agreement shall be construed to create a partnership or joint venture between the Borrower and Lender, and Borrower acknowledges and agrees that the sole relationship of the parties is that of borrower and lender.

[signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the above date.

BORROWER:

Name:[9]_____
[please print]

Name:[9]_____
[please print]

LENDER:

City/County of [10]_____

By:_____

Title:_____

GRANT AGREEMENT

This Agreement is executed _____, 20____, by City/County of _____ ("Grantor") and _____ ("Recipient").

RECITALS:

A. Grantor is lending \$_____ to Recipient under the CHIP Program (the "Loan") to use to rehabilitate Recipient's residence.

B. Grantor has incurred costs in processing the Recipient's Loan application and will incur additional costs in administering the Loan (the "Costs"), the approximate amount of which is \$_____.

C. Grantor intends to grant to Recipient the full amount of the Costs (the "Grant").

NOW, THEREFORE, the parties agree as follows:

1. Recipient will use the Grant solely to pay the Costs.
2. Upon receipt of the Grant amount from the Georgia Department of Community Affairs, Grantor will disburse the Grant to itself to be applied in payment of the Costs.

IN WITNESS WHEREOF, the Grantor and Recipient have executed this Agreement.

Grantor:

City/County of _____

Recipient

By: _____

Recipient

Title: _____